IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 5028 of 2003-C

CC.69/2003 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER: ACCUSED (A1 TO A3):

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1. RAJAN, S/O. KRISHNANKUTTY,
   TELECOM QUARTERS NO.B2-66/G, PATTAL, PERUMBAVOOR.

2. MEHABOOBKHAN, S/O. BABUKHAN,
   TELECOM QUARTERS NO.19/66L, PATTAL, PERUMBAVOOR.

3. BHASKARAN, S/O. KUTTAN,
   TELECOM QUARTERS NO.19/66V, PATTAL, PERUMBAVOOR.

BY ADV. SRI.R.T.PRADEEP
SRI.K.SUNILKUMAR

RESPONDENTS: COMPLAINANT:

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1. THE STATE OF KERALA,
   REPRESENTED BY THE DIRECTOR GENERAL OF
   PROSECUTION, HIGH COURT OF KERALA, ERNAKULAM.

2. SREENIVAS, S/O. THANKAPPAN,
   B.S.N.L., TELECOM QUARTERS NO.B.19/66G,
   PATTAL, PERUMBAVOOR.

BY ADV. SMT.P.V.KOCHUTHRESIA
SRI.SURAJ.S
SRI.P.A.KUMARAN
PUBLIC PROSECUTOR MR. AMJAD ALI
SRI.S.KRISHNA KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

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CRL.M.C.NO. 5028 OF 2003

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DATED THIS THE 25TH OCTOBER 2007

ORDER

The petitioners who are accused 1 to 3 in C.P.No.69/2003 in the file of the Judicial First Class Magistrate Court, Perumbavoor with respect to the offences under Sections 323,294(b), 341, 447, 506(1) read with Section 34 I.P.C. and under Sections 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called 'the Act') have sought for getting quashed the above proceedings alleging that the same initiated on the basis of the private complaint is an absolutely false one and instituted as a retaliation as on the basis of the complaint of the first petitioner, the police have filed C.C.No.153/2003 in which the first respondent/complainant and his mother are the accused. It is also pointed out that the alleged words mentioned to have uttered by the first petitioner would not attract the provisions of the Act. It is also pointed out that it is after eight months of the incident that the complaint has been instituted.

2.On the other hand, the counsel for the respondent/complainant has contended that the petitioners herein are highly influential and superior officers of the father of the complainant who and the petitioners herein are working in the Telecom department and residing in the Telecom quarters and that although the respondent was admitted in the hospital on the same day and his statement was recorded by the police no further action was taken. According to him, he came to know of the above fact only when he received summons from the court in the present proceedings. It is also pointed out that the court has proceeded in the present matter after recording the statements of witnesses produced by the complainant/respondent that included five persons including the Doctor at the Taluk headquarters hospital.

3. Annexure-IV is the copy of the final report in C.C.No.153/2003 in which the respondent/ complainant and his mother are the accused. The same is with respect to the offence under Sections 323, 324 read with Section 34 I.P.C. The prosecution allegation therein is that the respondent at the instance of his mother on 19-9-2002 at about 5.30 p.m. attacked the first petitioner from inside the compound of the telecom quarters in which the complainant and the petitioners are residing and manhandled him and the second accused who is his

mother also abused and beat the first petitioner. Petitioners 2 and 3 are witnesses 2 and 4 in the above charge sheet. Annexure-II is the F.I.R. N the above case dated 21-9-2003 and it can be gathered therein that the first petitioner was admitted in the hospital and that F.I.S. was recorded from at the hospital. Counsel for the petitioners have relied on the decision in **State of Kerala** v. **Hassan,** 2002(1) K.L.J.779 wherein the court has examined the term "pulayanadi" which is the same word that has been allegedly uttered by the first petitioner against the respondent herein. In the above decision this Court has held that the dictionary meaning of the above word is only "prostitute" and hence the same has no reference to any caste name. The allegation in Annexure-II complaint is that he above word was used so as to refer to his caste and thereby the offences under the Act is attracted. In the circumstances, I find that the above contention of the counsel for the petitioners has to be upheld. I find that the alleged offence under the Act will not be attracted and hence the complaint filed relying on the provisions of the Act cannot be sustained.

4. The contention that the entire case is false and amounted to abuse of process of the court, I find, is a matter that has to be ascertained after adducing evidence as both sides have advanced contentions justifying their respective cases.

In the circumstances, the Crl.M.C.is allowed in part to the effect that the proceedings so far as it involved Section 3(1)(x) of the Act and the committal proceedings pending on the basis of the above provision would stand set aside. The Judicial First Class Magistrate is hereby directed to proceed with the matter without reference to the provisions of the Act and confining to the offences alleged under the I.P.C. The Crl.M.C.is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

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P.S.TO JUDGE